

REMARKS

Claim 1 was examined and was rejected. New claims 19-33 have been added. Reexamination and reconsideration of the claims are respectfully requested in view of the following remarks.

Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Berg et al. (4,837,285). Applicants respectfully traverse this rejection.

As is well-known to the Examiner, a claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference." MPEP §2131. Berg et al. '285 falls far short of this statutory requirement for anticipation of claim 1.

Berg et al. '285 describes collagen matrix beads which are incorporated in wound dressings or implants in the form of a dry powder or in a pharmaceutically acceptable inert carrier. While the carrier may be formed from a gel (col. 4, lines 46-49), the collagen matrix beads themselves are not "gel particles" as asserted by the Examiner. Instead, the collagen matrix beads of Berg et al. '285 are formed as a network of fine collagen fibers having thicknesses varying from about 5-35 microns, preferably about 10 microns. The fibers define surface and interior pores connected by internal channels (col. 3, lines 28-32). The resulting matrix is an open structure intended to promote cell in-growth while remaining "sufficiently stiff and non-compressible as to fill and protect a wound." (Col. 2, lines 34-36).

In contrast, claim 1 of the instant application is directed at a fragmented hydrogel. A hydrogel is a gel where the liquid portion is aqueous. A gel is a type of colloid in which the dispersed phase has combined with the dispersion medium to produce a semisolid material, such as a jelly (The American Heritage Dictionary of the English Language, Fourth Edition, Houghton Mifflin Company, copyright 2000). Thus, a hydrogel is not formed of a network of stiff and incompressible fibers, particularly fibers which define interior pores connected by internal channels, since gels do not have pores or internal channels. Thus, the fragmented hydrogels in claim 1 unambiguously

misquote
substantially
stiff

distinguishes the bead materials of Berg et al. '285, which are neither gels nor hydrogels. Whether the beads of Berg et al. are later combined with a gel carrier is irrelevant since the carrier is not fragmented as required by claim 1 (as well as all newly introduced dependent claims). For these reasons, Applicants believe claim 1 to be novel over the teachings of Berg et al. '285.

Claim 1 was also rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al. (4,837,285). Applicants respectfully traverse this rejection.

Prima facie obviousness requires that the Examiner establish (1) that the prior art reference teach or suggest all the claim limitations, (2) that there be some suggestion or motivation, either in the reference itself or in the general knowledge available to one of ordinary skill, to modify the reference, and (3) that there be a reasonable expectation of success. MPEP §2142. In rejecting the claim 1 herein, the Examiner has failed to meet at least the first two of these burdens.

As discussed above with respect to the §102 rejection, Berg et al '285 nowhere teaches or suggests a fragmented hydrogel. The "fragments" or "particles" relied on by the Examiner are in fact "stiff and non-compressible" fibrous structures which are neither hydrogels nor possess the qualities of a hydrogel. The fact that Berg et al. '285 teaches that such stiff "beads" may be combined with a conventional (non-fragmented) gel underscores the distinction. The beads of Berg are not gels and the gels of Berg are not fragmented.

Nor has the Examiner pointed to any suggestion or motivation for modifying the teachings of Berg to yield a fragmented hydrogel. The collagen matrix beads are fibrous structures which are intended to be stiff and porous. To modify those structures to a gel form would eliminate those very characteristics. While the beads may be combined in a gel carrier, there is nothing in the patent, or in any other source cited by the Examiner, which would suggest that such a gel should be fragmented as required by claim 1 herein.

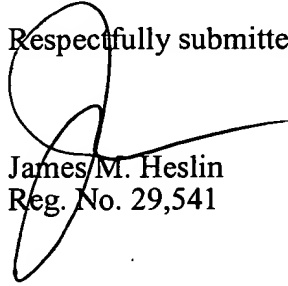
Under these circumstances, Applicants respectfully submit that the Examiner has failed to meet his burden and that claim 1 is clearly non-obvious and allowable over the teachings of Berg et al. '285.

As a final matter, Applicants have added new dependent claims 19-33. As these claims are all dependent on claim 1, they are allowable for all of the reasons discussed with respect to claim 1 above.

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



James M. Heslin
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: (415) 576-0300
LMT:lmt/jke
PA 3262763 v2